

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

JAMES DUNYAN,

Petitioner

VS.

PENNSYLVANIA BOARD OF
PROBATION & PAROLE &
ATTORNEY GENERAL OF
PENNSYLVANIA,

Respondent

ACTION NO. 3:05-1492

(Judge Kosik)

ORDER

AND NOW, THIS 27th DAY OF MARCH, 2007, IT APPEARING TO THE COURT
THAT:

(1) On July 27, 2005, petitioner, James Dunyan, an inmate at the State Correctional Institution at Waymart, filed the instant petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254;

(2) In his petition, petitioner challenged the denial of parole by the Pennsylvania Board of Probation and Parole raising ex post facto questions, as well as the findings of the Board:

(3) The matter was assigned to Magistrate Judge Malachy E. Mannion, who issued a Report and Recommendation on March 5, 2007 recommending that the petitioner's petition for writ of habeas corpus be dismissed as moot;

(4) Specifically, the Magistrate Judge determined that petitioner was no longer in state custody, that he served his maximum term, which expired on February 17, 2006, and that he was released and was not on probation;

(5) The Magistrate Judge found that where a petitioner challenges only the length of his sentence, such as the denial of parole, and he serves his maximum sentence and

is released unconditionally, than it moots the controversy and deprives the court of jurisdiction.

(6) The Magistrate Judge concluded that based on the indications in the record that petitioner's maximum term expired; and based on the court's conversation with a records officer that petitioner was unconditionally released from incarceration and was no longer in custody; and, because petitioner did not inform the court of any collateral consequences, there was no case or controversy before the court and the petition for writ of habeas corpus was moot;

AND, IT FURTHER APPEARING THAT:

(7) If no objections are filed to a Magistrate Judge's Report and Recommendation, the plaintiff is not statutorily entitled to a de novo review of his claims. 28 U.S.C. § 636(b)(1)(C); Thomas v. Arn, 474 U.S. 140 (1985). Nonetheless, the usual practice of the district court is to give "reasoned consideration" to a Magistrate Judge's report prior to adopting it. Henderson v. Carlson, 812 F.2d 874, 878 (3rd Cir. 1987).

(8) We have considered the Magistrate Judge's Report and agree with the recommendation.

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

(1) The Report and Recommendation of Magistrate Judge Malachy E. Mannion dated March 5, 2007 (Document 19) is adopted;

(2) The petitioner's petition for writ of habeas corpus is dismissed as moot;

(3) The Clerk of Court is directed to close this case and to forward a copy of this Order to the Magistrate Judge; and

(4) Based on the court's conclusions herein, there is no basis for the issuance of a certificate of appealability.

s/Edwin M. Kosik
United States District Judge